

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DANIEL CAOUETTE,

Plaintiff,

vs.

No. CV 18-00853 JCH/JHR

NEW MEXICO CORRECTIONS DEPT., et al.,

Defendants.

ORDER ON PENDING MOTIONS

THIS MATTER is before the Court *sua sponte*. The Court has received and docketed the Civil Tort Complaint filed in the State of New Mexico, County of Guadalupe, Fourth Judicial District Court, and removed to this Court on September 11, 2018. (Doc. 1, 1-1). Pending before the Court are the Motion for Protective Order filed by Defendant Warden Horton (Doc. 5), Motion for Leave to File Amended Complaint filed by Plaintiff Caouette (Doc. 6) and Motion for Service by U.S. Marshall filed by Plaintiff (Doc. 10).

Because Plaintiff is a prisoner proceeding pro se, the Court is obligated to conduct a preliminary screening of the Complaint. *See* 28 U.S.C. § 1915A. Whenever a prisoner brings a civil action against government officials, the Court is obligated to screen the prisoner's complaint or petition. 28 U.S.C. § 1915A. Section 1915A states:

“The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.”

...

On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—

(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or

(2) seeks monetary relief from a defendant who is immune from

such relief.”

28 U.S.C. § 1915A(a) and (b).

In his Motion for Protective Order, Defendant Horton asks the Court to issue an order protecting him from discovery at this stage of the proceedings. (Doc. 5). Plaintiff Caouette’s Motion for Service by U.S. Marshall asks the Court to order service of process on the Defendants. (Doc. 10). Requests for service of process, discovery, and submissions of proof are premature and unavailable prior to the Court’s completion of its screening obligation. *See Jones v. Bock*, 549 U.S. 199, 213-214 (2007). The Court will grant Defendant’s Motion for Protective Order (Doc. 5) and deny Plaintiff Caouette’s Motion for Service (Doc. 10) as premature. If Plaintiff’s Complaint is not dismissed on initial screening, the Court will enter further orders governing service of process, discovery, and scheduling.

Plaintiff Caouette also filed a Motion for Leave to File Amended Complaint on October 9, 2018. (Doc. 6). Caouette then filed his Amended Complaint on November 8, 2018. (Doc. 9). The Court will deny Plaintiff Caouette’s Motion for Leave to File Amended Complaint as moot in light of his filing of the Amended Complaint.

IT IS ORDERED:

- (1) Defendant Warden Horton’s Motion for Protective Order (Doc. 5) is **GRANTED**;
- (2) Plaintiff Daniel Caouette’s Motion for Service by U.S. Marshall (Doc. 10) is **DENIED** as premature; and
- (3) Plaintiff Daniel Caouette’s Motion for Leave to File Amended Complaint (Doc. 6) is **DENIED** as moot.


UNITED STATES MAGISTRATE JUDGE